REMARKS

The Final Office Action dated March 28, 2005, has been received and carefully considered. It is believed that this Amendment, in conjunction with the following remarks, place the application in immediate condition for allowance. Accordingly, entry of this Amendment and favorable consideration of the application are respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE ANTICIPATION REJECTION OF CLAIMS 10-11 AND 17-18

On page 2 of the Office Action, claims 10-11 and 17-18 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Publication No. 2002/0059137 to Freeman *et al.* ("Freeman"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a *prima facie* case of anticipation. Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. *Id.*. "In addition, the prior art reference must be enabling." *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). "Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention." *Id.*.

In response to Applicant's arguments set forth in the last response, the Examiner states that "using the Internet, the borrower has the capability of creating as many mortgage approval

applications and forwarding those applications to a plurality of mortgage underwriting systems (p. 3, 33 to p. 4, 40). Thus, the Examiner is interpreting Freeman as disclosing this limitation substantially as claimed."

Although Applicant does not agree with the pending rejection, Applicant has nonetheless amended independent claim 10 to clarify the claimed system and better distinguish the cited reference. In particular, independent claim 10 has been amended to recite: "an application creating module for creating a plurality of mortgage approval applications comprising the mortgage approval application data, wherein the application creating module creates the plurality of mortgage approval applications without intervention from the borrower." Applicant respectfully submits that Freeman does not teach or suggest any feature or functionality comprising an application creating module for creating a plurality of mortgage approval applications comprising the mortgage approval application data, wherein the application creating module creates the plurality of mortgage approval applications without intervention from the borrower. Moreover, Applicant respectfully submits that the Examiner's interpretation does not work because it requires user intervention (e.g., the user creating the plurality of applications), which is now expressly called out from the system of independent claim 10, as amended.

Further, as previously asserted, Applicant respectfully submits that Freeman merely discloses populating a single application with the application data entered:

> When a loan application or other related data has been entered, either by importing it or keying the data, the present system uses the data to populate all fields in all parts of ***a mortgage loan application*** file employing hypertext markup language (HTML). If there are errors in the data, a message will be sent to the user. Otherwise, the originator will see the data displayed on the web site for confirmation as soon as it is entered. The originator can change information directly on the web page and then save the data (via EDIT APPLICATION) when satisfied that the data are correct.

See, Freeman, ¶ 54. (emphasis added). Accordingly, Applicant submits that Freeman does not teach or suggest "creating a plurality of mortgage approval applications comprising the mortgage approval application data, wherein the application creating module creates the plurality of mortgage approval applications without intervention from the borrower," as expressly recited in amended claim 10.

Regarding the other recitations of claim 10, Applicant respectfully submits, as previously asserted, that Freeman does not teach or suggest an online mortgage application processing and tracking system comprising a receiver device for receiving mortgage approval application data from a borrower device, ***wherein the mortgage approval application data is entered into the borrower device by an individual borrower***," as expressly recited in claim 10. (emphasis added). Rather, Freeman discloses -- as evidenced by the excerpts referenced by the Examiner -- a system where a "mortgage originator" (e.g., a mortgage broker), not the individual borrower, provides the application data:

> The ***mortgage originator typically enters mortgage loan application data*** into its local computer which has been programmed with loan origination software (LOS). There are many such programs and the present invention is designed to accommodate all of the major ones. An example of a common version of LOS is the program CONTOUR. This step, namely entering loan application data manually into a computer using the LOS, is not part of the present invention in all of its preferred embodiments; nor is the present invention dependent on the mortgage originator having LOS or a particular brand of LOS. As will be described, loan application data may be keyed in directly, without the need for loan origination software.

See, Freeman, ¶ 39 (emphasis added). Applicant submits that having a mortgage originator enter loan application data in the manner disclosed by Freeman is not the same as having the

application data entered by the borrower, as required by the pending claims,[1] and thus respectfully submits that Freeman does not teach or suggest a receiver device for receiving mortgage approval application data from a borrower device, wherein the mortgage approval application data is entered into the borrower device by an individual borrower, as expressly recited in claim 10.

The Examiner further states that Freeman discloses "a transmitter forwarding device for forwarding the at least one decision to the borrower device (p. 6 : 58)." Applicant respectfully submits, however, that Freeman merely teaches that the "status of the loan on the detail page changes when the underwriting report comes back." Moreover, Applicant submits that any loan status provided by Freeman is sent to the *originator*, not to the borrower device, as required by claim 10. Accordingly, Applicant respectfully submits that Freeman does not teach or suggest a transmitter forwarding device for forwarding the at least one decision to the borrower device, as expressly recited in claim 10.

Claims 11-18 are dependent upon independent claim 10. Thus, since independent claim 10 should be allowable as discussed above, claims 11-18 should also be allowable at least by virtue of their dependency on independent claim 10. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, Freeman does not teach or suggest a questions module for presenting a questionnaire ***to the individual***, wherein the mortgage approval application data received is generated at the end user device in response to the questionnaire, as recited in

[1] In stark contrast to the claimed systems and methods which aim to enhance the *borrower's* experience during the loan application process, Freeman discloses systems and methods that facilitate the process for *mortgage originators or brokers*, and thus is patentably distinguishable from the pending claims.

dependent claim 17. As stated above, Freeman discloses systems and methods that involve interaction with a mortgage originator, not the individual borrower. Accordingly, Applicant submits that Freeman does not disclose presenting a questionnaire to the individual as required by claim 17. Ledba and Ahuja do not make up Freeman's deficiency in this regard.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 10-11 and 17-18 be withdrawn.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 1-9, 12-14, 16 AND 19-20

On page 2 of the Office Action, claims 1-3, 5, 7-9, 12, 14, 16 and 19-20 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Freeman in view of U.S. Patent No. 6,611,816 to Lebda ("Lebda"). On page 3 of the Office Action, claims 4, 6 and 13 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Freeman and Lebda as applied to claims 1, 3 and 12 above, and further in view of U.S. Publication No. 2002/0013711 to Ahuja ("Ahuja"). On page 3 of the Office Action, claim 15 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Freeman in view of Ahuja. These rejections are hereby respectfully traversed.

As stated in MPEP § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Also, as stated in

MPEP § 2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Further, as stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). That is, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970).

In response to Applicant's arguments set forth in the last response, the Examiner states that "Lebda discloses that the user may submit a single credit application to a plurality of lending institutions who then may make offers to the customer via the Internet (p. 1, lines 60-65), Thus, Lebda is being interpreted as reading onto the invention as substantially claimed in that a plurality of mortgage applications are created and each of the plurality of lending institutions receives a mortgage application. If the application is approved, the application is then forwarded to underwriting, as disclosed by Freeman."

Applicant respectfully disagrees with the Examiner's interpretation of Lebda. In particular, Applicant respectfully submits that submission of a single application to a plurality of lending institutions is not the same as "creating a plurality of mortgage approval applications

comprising the mortgage approval application data." In the Examiner's interpretation, for example, only a single application is created. Applicant respectfully submits that submitting this single application to a plurality of lenders is not the same as creating a plurality of mortgage approval applications. Moreover, Applicant respectfully submits that Lebda does not teach or suggest "wherein creating the plurality of mortgage approval applications includes formatting a mortgage approval application depending on the requirements of a mortgage underwriting system," as expressly recited in claim 20. In fact, the Examiner's own interpretation of Lebda makes clear that Lebda does not format a mortgage approval application depending on the requirements of a mortgage underwriting system.

Rather, as previously asserted, Applicant respectfully submits that Lebda merely teaches creation of a "single universal" credit application which is transmitted to a plurality of lending institutions:

> It is a further object of the present invention to provide a universal credit application over the Internet and to allow the Internet user to submit ***a single credit application*** to a plurality of lending institutions who then make offers to the customer via the Internet.

See, Lebda, Col. 3, lines 60-65 (emphasis added); *see also* Col. 1, lines 66-Col. 4, lines 2 ("method and apparatus for coordinating ***an*** electronic credit application between an Internet user and a plurality of lending institutions via the Internet.") (emphasis added).

In contrast, each of pending claims 1, 19 and 20 recites the creation of a ***plurality*** of applications based on the application data entered by the borrower. Moreover, these plurality of applications are then forwarded or transmitted to mortgage *underwriting* systems. Lebda, on the other hand, teaches transmitting a single application to a plurality of lenders, not underwriters. Applicant respectfully submits such differences patentably distinguish the claimed systems and

methods from the proposed combination of Freeman and Lebda. Moreover, Applicant respectfully submits that Lebda does no teach or suggest any feature or functionality wherein the step of creating a plurality of mortgage approval applications includes formatting a mortgage approval application depending on the requirements of a mortgage underwriting system," as expressly recited in claim 20.

Further, Applicant respectfully submits that the Office Action does not present a proper motivation to combine the references to achieve the claimed systems and method, and thus has failed to set forth a *prima facie* case of obviousness. In particular, Applicant submits that the Office Action sets forth a motivation to combine that is improperly based on hindsight from viewing the pending claims. In fact, Freeman makes no suggestion that it would benefit from or seeks to enhance the borrower's experience, while Lebda fails to offer any suggestion that it would improve on or enhance Freeman's systems and methods for allowing a *mortgage originator* to process a loan application online. Their combination therefore is improper.

Claims 2-9 are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 2-9 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, Freeman does not teach or suggest the steps of presenting a questionnaire to the individual, wherein the mortgage approval application data received is generated at the end user device in response to the questionnaire, as recited in dependent claim 8. As stated above, Freeman discloses systems and methods that involve interaction with a mortgage originator, not the individual borrower. Accordingly, Applicant submits that Freeman

does not disclose presenting a questionnaire to the individual as required by claim 8. Lebda and Ahuja do not make up Freeman's deficiency in this regard.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-9, 12-14, 16 and 19-20 be withdrawn.

III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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